

# Roger E. Egan

April 7, 2014

Ex Parte

Marlene H. Dortch  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

**Re: Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields, ET Docket No. 03-137**

Dear Ms. Dortch:

I had the pleasure to participate in a meeting with the FCC on March 12, 2014. This meeting was requested by James Tomaseski, Director of the IBEW's Safety and Health Department and present from the FCC were Julius Knapp, Joe Monie, Bruce Romano, Robert Weller, Ed Mantiply, and Martin Doczkat.

The meeting was set to discuss the adoption of safe harbor provisions and to discuss the continuing problem with third party exposure to harmful radio frequency radiation.

As a long time executive from the Insurance industry (attached is a brief bio), I made a number of points in the meeting that I would like to reiterate for the record:

1. This hazard emanates from the wireless carriers cell towers and the significance of this exposure is only well known by these same carriers. As such, in my opinion, it is the wireless carrier's responsibility, primarily, to mitigate this hazard.
2. This risk is often transferred to "unsuspecting" property owners via the lease by the use of "*hold harmless*" and "*Indemnification*" clauses --- see Claims Journal article attached.
3. Property owners will have to rely on their own liability insurance policies to protect them from this exposure. The Insurance industry is now well aware of the potential for serious injury --- see AM Best article attached.
4. Rather than allow *safe harbor*, in my opinion, it is now time to solve this problem --- i.e. **prevent injury rather than apportion liability**.
5. If this exposure is not addressed in a comprehensive manner, insurance companies may exclude coverage for RF exposure. This could result in network disruptions precisely at a time when Americans desire more cellular coverage. The problem is not going away --- the time to act is now!

I suggest that the FCC bring all interested parties (wireless carriers, property owners, and insurers) together to agree on an appropriate safety protocol to protect people from RF radiation. Fortunately for all interested parties, there is such a solution available through RF CHECK. You heard from Doug Williams, Chairman of RF CHECK and his colleagues in our meeting. RF CHECK offers a simple, effective, state-of-the-art solution to this problem.

Please include this letter in the public record on the above reference proceeding. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "R E Egan", followed by a long horizontal flourish.

Roger E. Egan

## **ROGER E. EGAN**

Mr. Egan is an investor and business consultant to hedge funds and private equity firms who invest in the insurance industry. He is currently working with Kohlberg & Company as Executive Chairman of one of their companies --- Risk Strategies Company, Boston.

In 2005 Mr. Egan co-founded Integro, Ltd. --- an insurance brokerage firm and the largest venture capital deal in the United States that year. He served as CEO of Integro until September of 2008.

Before launching Integro, Mr. Egan was President of Marsh, Inc., the largest insurance brokerage firm in the world with over \$ 6 billion in revenue and 43,000 employees in over 120 countries. During his 32 - year tenure with the firm, he held a number of senior management positions, including Vice Chairman of Marsh Inc. and President and CEO of Marsh North America.

Mr. Egan is a past member of the Board of Overseers of the School of Risk Management at St. John's University and a past director of the American Institute for Chartered Property and Casualty Underwriters, The Insurance Institute of America, and Sedgwick CMS. He is active in New Jersey charities and is the founder of MAC Drug-Free and Teen Pride, Inc., both aimed at preventing substance abuse among youth.

Mr. Egan received an A.B. in mathematics, with honors, from Boston College and an M.B.A. from the Stern Business School at New York University. He also completed the Program for Management Development at Harvard Business School and the Executive Management Program at Stanford University.

Mr. Egan has been named a David Rockefeller Fellow by the New York City Partnership.

## Hidden Insurance Risk Lurks in Property Leases

By Gloria Vogel, CFA | August 21, 2013

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### The RF Radiation Risk Factor

In February 2013, AM Best classified RF (radio frequency) radiation from wireless antennas as an “Emerging Technology-Based Risk.” This was based, in part, on an estimated 250,000 workers per year who may be over-exposed to RF radiation from the 600,000 governmental and commercial RF radiating antenna systems across the nation.

The FCC recognizes RF radiation from transmitting antennas as a human health hazard, as a single RF transmitting antenna can emit hundreds of times more RF radiation than a cell phone. RF radiation hazards from transmitting antennas can cause thermal and non-thermal or cognitive/psychological injuries. Non-thermal or cognitive/psychological injuries do not necessarily have a physical manifestation. Cognitive/psychological RF injuries include memory loss, mood disorders, sleep disorders, and impaired or diminished cognitive function.

RF radiation injuries should be of concern to insurers, especially since their exposure to the risk is hidden within the lease contracts between the commercial wireless service providers (CWSPs) and landlords who lease space to those CWSPs for antenna systems.



### The Property Leases:

Landlords who lease space to the CWSPs are completely unaware of the potential for injury from RF transmitting antennas and that they will be held liable for such injuries. Typical site leases include a mutual indemnification clause, which would appear to protect the landlords from personal injuries that may be caused by the CWSPs' antennas. However to enforce the indemnity provision, the landlords must demonstrate that the primary cause of injury was the fault of the CWSPs.

CWSPs will take the position that it was the landlords who permitted access to the RF hazard area near the antennas, which was the proximate cause of the injury; or, that injury could have been prevented by the landlords controlling access to the RF hazard areas. So, in reality, the lease language indemnity

provision merely buys the landlords and their insurers a lawsuit against well-financed CWSPs with a litany of possible legal defenses.

## Who Has Liability for RF injuries?

The CWSPs employ hundreds of RF engineers and are the technical experts on anything involving RF radiation and its ability to cause injury to humans. Accordingly, prior to the lease being signed, the CWSPs have a “Duty to Warn” the unsuspecting landlords, and their insurers, of the RF radiation hazards associated with the lessee’s equipment.

By not divulging pertinent RF hazard information in the leases, the CWSPs may be attempting to use the 1996 Telecom Act as a shield in not warning the landlords. The Act precludes any discussion of RF radiation at municipal siting hearings. However, there is nothing contained in the language that enjoins the CWSPs from not informing the landlords of the hazards associated with RF radiation in the lease agreements they unilaterally create. Their actions are based solely on a business decision that has been used by other industries in the past...never mention the physical harm to humans that the product produces.

A landlord with full knowledge of their financial exposure to the liability assumed with the lease would likely either demand a greater monthly fee, or would decline permission to site on their property. It stands to reason that no business person would trade hundreds of thousands or more in attorney and legal fees associated with an RF injury, for a few thousand dollars of rental income per month.

## Legal Recourse

Once a lease has been executed without proper disclosure, “Fraud in the Inducement” can be alleged by the landlord asserting that the CWSP concealed material facts associated with the hazards of their operations/equipment. The CWSP will have known at the time of negotiating the contract that by not disclosing those material facts, the landlord might be more inclined to sign the lease. Additionally, theories of “Intentional and Negligent Misrepresentation of Material Facts” may be brought against the CWSP.

Finally, there will be insistence that the CWSP has a “Non-Delegable Duty” to ensure full compliance with the FCC RF human exposure standard. Federal law, 47 CFR 1.130, establishes the FCC licensee’s (CWSP) duty regarding RF safety, which cannot be transferred to the landlord.

## Lack of Claims Doesn’t Mean Lack of Claimants

The insurers should not rely on the lack of RF injury claims to proclaim there isn’t a significant RF injury problem with workers being exposed to RF radiation on a daily basis. The lack of claims is the result of injured parties being unaware that they were over-exposed to RF radiation. Just one plaintiff’s attorney with an aggressive media campaign can quickly alter this lack of knowledge. As the population of workers becomes aware of the hidden RF hazards and their potential for exposure, claims will likely be filed by the thousands, and long term litigation will result, in similar manner to the way asbestos evolved.

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*Gloria Vogel is senior vice president at N.Y.-based Drexel Hamilton, a service disabled veteran broker-dealer. She also teaches finance and metrics to graduate students as an adjunct professor at NYU-SCPS. Previously, Vogel was a contributing author on [www.seekingalpha.com](http://www.seekingalpha.com). She worked at Swiss Re and was an All-Star equity research insurance analyst at several major investment banks, including Lehman Brothers and Bear Stearns.*



February 14, 2013

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## Emerging Technologies Pose Significant Risks with Possible Long-Tail Losses

**T**he insurance industry faces a constantly escalating level of exposure from rapidly developing technologies with risks that are not well understood. In many situations, the science associated with understanding these new risks is in the early stages of development.

A.M. Best believes that it is critical for insurers to maintain vigilant oversight of emerging technologies as a critical component of their enterprise risk management system. Effective enterprise risk management encompasses identifying, evaluating and addressing risks that could threaten the earnings or viability of an insurer. This includes a prospective look at the underwriting exposures so that changes to policy language or underwriting criteria can properly manage losses from these new risks. An exposure which may present only insignificant insured losses at present, may bring future unprecedented losses.

None of the current emerging technologies appears to be the next asbestos, the longest running and most expensive tort in U.S. history, according to the Rand Institute. Asbestos in many ways presented the “perfect storm” of loss characteristics: extreme toxicity; a very lengthy latency period before emergence of illness; a contagion capability through airborne transmission and physical contact; and lengthy exposure to a very large number of workers, their family members and asbestos product users.

A.M. Best recently estimated the U.S. property/casualty industry’s ultimate asbestos losses at \$85 billion. While losses from emerging technologies may pale in comparison, they still could be extremely significant to the industry. Insurers need to monitor the manner in which emerging technologies are, or are likely to be, deployed; the risks associated with their use; their residual or unintended impacts; and the manner in which the insurance policies may be called upon to cover losses.

### Emerging Technology-Based Risks

**RF (Radio Frequency) Radiation Risk** – Today there are more than 600,000 cell sites in the United States and that number is expected to grow with the demand for faster, more reliable wireless devices. The risks associated with long term use of cell phones, although much studied over the past 10 years, remains unclear. Dangers to the estimated 250,000 workers per year who come in close contact with cell phone antennas, however, are now more clearly established. Thermal effects of the cellular antennas, which act at close range essentially as open microwave ovens can include eye damage, sterility and cognitive impairments. While workers of cellular companies are well trained on the potential dangers, other workers exposed to the antennas are often unaware of the health risks. The continued exponential growth of cellular towers will significantly increase exposure to these workers and others coming into close contact with high-energy cell phone antenna radiation.

**Cyber Risk** – Significant data breaches have become common (e.g., Citigroup, the International Monetary Fund, JP Morgan Chase & Co., Sony Online Entertainment, Hilton Worldwide, Marriott International Inc., Verizon and Heartland Payment Systems). These can involve, for example, loss of sensitive financial information, personal data, and

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#### Editorial Management

Carole Ann King



proprietary secrets. Identity theft alone is estimated to cost consumers and companies roughly \$5 billion and \$50 billion, respectively, each year. A 2009 study found that lost data cost U.S. companies in excess of \$200 per lost customer file. In a 2011 study conducted among large U.S. companies, more than 80% of information technology executives said that they had detected one or more recent attacks. Such exposures continue to evolve as companies are increasingly storing sensitive and confidential information with cloud vendors – a vendor that provides other companies with an infrastructure on which to store data or run applications – exposing data to new types of breaches.

**Fracking Risk** – Over the past 10 years horizontal hydraulic fracturing (“fracking”) has become a big business and a highly contentious issue. The process involves pumping a pressurized fluid into a rock layer, which causes fracturing of the rock and release of petroleum, natural gas or other substances for extraction. The potential benefits are enormous; however, there are significant risks, including potential release of radioactive substances, radon (a known carcinogen) in the natural gas going into homes and potential chemical contamination of drinking water. The U.S. Environmental Protection Agency has determined that fracking was the likely source of ground water contamination in at least 36 cases. There are a variety of other concerns including the potential for exposed workers to develop silicosis and that the process may lead to earthquakes.

**Nanotechnology Risk** – A wide variety of consumer and industry products are increasingly constructed at the molecular level, using materials from 1 to 100 nanometers in length (a nanometer is one billionth of a meter). Nanotechnology is employed in an array of products, including medicines and medical devices, glass, coatings, construction products, fire protection materials, vehicles, foods, textiles, cosmetics, optics and sports equipment. Nano-sized particles, however, act differently than materials built at normal scale, and existing chemical risk assessments are not suited for exposures arising from nanoparticles. Considerable concern has arisen that some nanoparticles may be toxic. With the exception of airborne nanoparticles entering the lungs, understanding of the effects of nanoparticle on the human body, including accumulation, metabolism and organ-specific toxicity is extremely limited. Concerns involve both the potential of immediate harms as well as harmful effects appearing after long latency periods. Of the technology risks now emerging, nanotechnology product exposures may be the most similar to asbestos. While it remains unclear whether nanoparticles can lead to asbestos-like losses, insurers need to carefully monitor developments of this emerging technology.

## Conclusion

Insurers must evaluate constantly evolving technology exposures with the knowledge that existing scientific/technical understanding is often incomplete. A.M. Best will review companies' understanding of their exposure to emerging risk, and their approaches to mitigating the risks within the framework of their enterprise risk management programs.

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